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No. 83-715

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

RIO VISTA NON-PROFIT
HOUSING CORPORATION,

Appellant,

against

COUNTY OF RAMSEY,

Appellee.

ON APPEAL FROM THE
SUPREME COURT OF MINNESOTA

BRIEF OPPOSING MOTION TO DISMISS

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REPLY BRIEF

THE SUPREMACY CLAUSE ISSUE.

In order for there not to be any discrimination between federal-subsidized institutions of purely public charity like appellant, and state-subsidized institutions of purely public charity, and thus for there not to be a supremacy clause violation, at least two actions must occur. First, there must be a law taxing both federal and Minnesota subsidized institutions of purely public charity. The 1980 law does that. Secondly, there must be in existence state-subsidized institutions of purely public charity which are taxed by the 1980 law. It is undisputed in the instant case that there are none. See pages 21, 22 and 23 of appellant's

Jurisdictional Statement.[1] Until there are, the effect of the 1980 law is the same as it would have been had the law by its terms taxed only federally-subsidized institutions of purely public charity like appellant.

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[1] Page 11 of appellee's Motion to Dismiss characterizes as misleading appellant's statement that there are no state-subsidized institutions of purely public charity "because the record is silent as to the existence or non-existence of state-subsidized charitable housing." Paragraphs 24 and 25 of the Stipulation of Facts filed by the parties in the trial court plainly state that only four organizations have been taxed by appellee under the 1980 law, that all of the four organizations receive an operating subsidy from the federal government, and that none of the property of the other institutions of purely public charity is taxed (paragraphs 24 and 25 of the Stipulation are quoted on page 22 of appellant's Jurisdictional Statement). It is difficult to understand how the parties could more clearly have stipulated that the only organizations taxed by the 1980 law are those receiving a federal subsidy.

Notwithstanding the foregoing, appellee argues that a supremacy clause violation is averted simply because the provisions of the 1980 law are sufficiently broad to include state-subsidized housing. Appellee's argument is, in other words, that the form of the statute, and not its actual operation, controls. This Court consistently has rejected that argument if the impact of the statute differs from what its form would suggest. See, e.g., Lawrence v. State Tax Commission, 286 U.S. 276, 280 (1932) (". . . but in passing on its [the tax's] constitutionality we are concerned only with its practical operation, not its definition or the precise form of descriptive words which may be applied to it...."); Harvester Co. v. Department of Taxation, 322 U.S. 435, 441 (1944) (". . . In determining whether a tax is within the state's

constitutional power, we look to the incidence of the tax and its practical operation, and not its characterization by state courts . . ."); Nippert v. Richmond, 327 U.S. 416, 431 (1946) ("It is no answer, as appellee contends, that the tax is neither prohibitive nor discriminatory on the face of the ordinance; . . . Not the tax in a vacuum of words, but its practical consequences for the doing of interstate commerce in application to concrete facts are our concern....") (emphasis added); City of Detroit v. Murray Corp., 355 U.S. 489, 492 (1958) (". . . Consequently in determining whether these taxes violate the Government's constitutional immunity, we look through form and behind labels to substance . . ."). In the instant case, notwithstanding the form of the words used in the 1980 law, the sub-

stance of the law is that only appellant and organizations like appellant are taxed. There is no dispute regarding that fact. As earlier noted, the parties so stipulated to the district court.

On pages 9 and 13 of its Motion, appellee further argues that no supremacy clause violation exists because Congress was aware that states might tax the property of organizations like appellant (". . . a compelling fact which Rio Vista does not address in its Jurisdictional Statement", page 13 of appellee's Motion). Appellant has never argued in this litigation that under no circumstances may its property be taxed, but rather its argument is that if its property is to be taxed, it must be done in a constitutionally permissible manner. Certainly Congress did not intend otherwise.

THE EQUAL PROTECTION ISSUE.

Appellee argues in its Motion to Dismiss that a rational basis exists for the classification made by the 1980 law by virtue of (1) the governmental support received by appellant (p. 15 of its Motion), (2) the commercial nature of appellant's operation (p. 19 of its Motion), and (3) the absence of any private support received by appellant (pp. 17 and 21 of its Motion).

With respect to the first factor, the governmental support received by Appellant, in 1980, the year for which the taxes in dispute were levied, appellant received approximately 47 percent of its total support from either the Rent Supplement or Section 236 Programs. It received a small amount of support from miscellaneous sources (approximately 3 percent) and

the balance of its support (approximately 50 percent) was received from tenant rents. The crucial fact here is that the amount of the subsidies under the Rent Supplement and Section 236 Programs bears no relationship to the taxation of appellant's property. As pointed out on pages 14 through 18 of appellant's Jurisdictional Statement, the subsidies are received irrespective of whether the property of appellant is taxed and will not be increased if the property of appellant is taxed. It is difficult to understand how federal subsidies which are unaffected by whether appellant's property is taxed can provide a rational basis for taxing the property.

Moreover, the 1980 law taxes only institutions of purely public charity which provide decent housing and which receive a federal subsidy. Other

institutions of purely public charity are not taxed, notwithstanding the receipt by them of comparable, or greater, governmental support. For example, in Assembly Homes v. Yellow Medicine County, 273 Minn. 197, 201, 140 N.W.2d 336, 339 (1966), the property of a nursing home that received 75 percent of its support from either county welfare or the Veterans Administration was held to be exempt from tax. In Mayo Foundation v. Commissioner of Revenue, 306 Minn. 25, 37, 236 N.W.2d 767, 773 (1975), the property of the Mayo Foundation, a nonprofit corporation operated to advance medical education and research that received private contributions "as well as substantial grants, from the state and Federal governments", was held to be exempt from

tax.[2] The 1980 law does not tax the properties of organizations like those involved in Assembly Homes and Mayo Foundation. If the receipt of federal funds is a factor which justifies taxing appellant, what rational basis is there for taxing only the property of appellant and organizations like it and not the property of other organizations which receive comparable support? Appellee's Motion to Dismiss fails to answer this question.

The second factor identified by appellee is the commercial nature of

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2 The statement on page 16 of Appellee's Motion to Dismiss that there is no evidence that aid received by other charitable institutions approaches the magnitude or continuity of the assistance in the instant case is not correct. Rio Vista received approximately 47 percent of its total support from federal programs. The organization in Assembly Homes received 75 percent of its support from governmental sources. While the amount of support from governmental sources in the Mayo Foundation case was not stated, it was, as stated above, "substantial".

appellant's operations. Although appellee refers to the provisions in appellant's leases for security deposits and for eviction for nonpayment of rents (see footnote 3 on page 13, infra), the principal indicia of the commercial nature of appellant's operations appears to be the rents paid by tenants of appellant. As discussed on page 40 of appellant's Jurisdictional Statement, the amount of rent that appellant must charge to each of its tenants is mandated by HUD. Appellant cannot change the rents without HUD approval. Again here, there is no apparent relationship between the rents which appellant must charge and the taxation of appellant's property.

Appellee's Motion to Dismiss further fails to explain, if the charging of rents supports the taxation of an organization's property, what rational

basis exists for taxing the property of appellant but not the property of other institutions of purely public charity which also charge rents to the persons for whom they provide services. As pointed out on page 10, supra, the 1980 law does not tax the property of the organization in Assembly Homes, notwithstanding that it received 25 percent of its income from its patients. 273 Minn. 204, 140 N.W.2d 341. Nor does it tax the organization whose property was held to be exempt in Worthington Dormitory, Inc. v. Commissioner of Revenue, ____ Minn. ____, 292 N.W.2d 276, 281 (1980), notwithstanding that the largest source of revenue to the dormitory was rentals paid by the dormitory students.[3] If the

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[3] The organization in Worthington Dormitory required a damage deposit. 292 N.W.2d, page 278. The nursing home in Assembly Homes reserved the right to dismiss a patient who refused to pay his bill. 140 N.W.2d 339.

fact that appellant charges a rent that for each of its tenants is less than a market rent is a justification for taxing the property of appellant, what justification is there for taxing only the property of appellant and not the property of other institutions of purely public charity, like the organizations involved in the above two cases, which also charge their program beneficiaries a fee for the services they provide? Appellee's Motion to Dismiss provides no answer to this question.

Nor does the absence of private support, the third factor identified by the appellee in its Motion to Dismiss, provide a rational basis for the classification made by the 1980 law. Not only is there no apparent relationship between the absence of private support and the taxation of appellant's property, but, again, no explanation is provided why this factor justifies

taxing only the property of appellant and not that of other institutions of purely public charity which receive no private support. For example, the organization in Assembly Homes received no private support in the year in issue for the property taxed, and yet its property, and the properties of organizations like it, are not taxed by the 1980 law.[4] If the absence of private support is a relevant factor in taxing the property of organizations which receive no private support, what rational basis

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[4] On page 23 of its Motion to Dismiss, appellee argues that Assembly Homes is distinguishable because it "provided nursing care to elderly persons, the majority of whom apparently were indigent" and because Rio Vista received "no support whatever from private donations". However, Rio Vista also provided housing to elderly persons. Paragraph 20 of the Stipulation filed in the trial court states that of the 48 rental units owned and operated by appellant, there is an elderly person or persons residing in 20 of the units. Further, Rio Vista also provides services to persons unable to afford

exists for taxing only organizations like appellant but not other organizations which also do not receive any private support? Appellee's Motion to Dismiss fails to answer this question.

Finally, the most conclusive indicia that the classification made by the 1980 law is irrational and arbitrary is the burden that it places on the tenants of appellant. None of the tenants has a sufficient income or other assets to be able to afford payment of a market rent. If the 1980 law is upheld, tenants who now are without means to pay

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(Footnote 4 continued)

market rate housing. Paragraph 7 of the Stipulation filed in the trial court provides that none of the tenants has a sufficient income or other assets to be able to afford payment of the market rent. Finally, the two cases are not distinguishable because of the absence of private donations. The organization in Assembly Homes received no private support for the property in 1963, the year that the property was taxed. See 140 N.W.2d 339.

a greater rent must somehow find the money to pay the additional rent attributable to the tax increase or face an eviction.[5] If there is any rational basis for that result, it escapes appellant.

CONCLUSION

The decision of the Minnesota Supreme Court in the instant case is wrong on its merits. It conflicts with the decision of the Sixth Circuit Court

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[5] On page 13 of its Motion to Dismiss, appellee states that appellant has demonstrated no grounds whatsoever for its assertion that the burden of the property tax falls upon its tenants. To the contrary, as discussed on pages 14 through 18 of its Jurisdictional Statement, appellant's only support, apart from a small amount of miscellaneous income, is from either governmental subsidies or tenant rents. The government subsidies will not be increased if the tax in issue is imposed. The only other possible source of funds to pay the tax is from tenant rents. With regard to appellee's reference to 12 U.S.C. 1715z-1a(f)(1) on p. 19 of its Motion, see fn. 12 on p. 38 of appellant's Jurisdictional Statement.

of Appeals in United States v. State of Tennessee. It has the irrational consequence of placing a tax burden on low-income tenants who are being assisted under federal programs because they are without means to afford decent housing. Probable jurisdiction in this case should be noted for the foregoing reasons, to avoid the harsh consequences to the tenants that will result if the decision by the Minnesota Supreme Court is not corrected and to forestall the adverse impact that the decision by the Minnesota Supreme Court will have on federal housing programs if the beneficiaries of those programs must bear a property tax.

Respectfully submitted,

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